

**BEFORE THE TAMIL NADU ELECTRICITY REGULATORY
COMMISSION**

Dated : 11th September 2007

PRESENT:

Thiru S. Kabilan - Chairman

Thiru B. Jeyaraman - Member

and

Thiru R. Rajupandi - Member

M.P.NO.6 OF 2007

M/s. Southern Spinners & Processors Ltd.,
(Subsidiary of Fenner (India) Ltd. – Textile Division)
Sarada College Main Road, Salem 636 007 rep. by
Vice President R. Natarajan ----- Petitioner

Vs.

1. The Chief Engineer – NCES
Tamil Nadu Electricity Board,
Anna Salai, Chennai 600 002.
2. The Superintending Engineer,
Dharmapuri Electricity Distribution Circle,
Dharmapuri. ----- Respondent

The above petition coming up for final hearing on 1st August 2007, the Commission upon perusing the petition and the counter affidavit of the Respondents and all other connected records of the case and upon hearing the arguments of both sides and having stood over for the consideration of this Commission till this day, hereby pronounces the following

ORDER

1. Prayer of the Petitioner

The prayer of the petitioner is that this Commission may be pleased to pass the following order:

- (a) direct the respondents to implement the Order No.3 dated 15-05-06 passed by this Hon'ble Commission, in connection with the unutilized portion, of banked energy, so as to enable the petitioner to get 75% rate for 5,47,945 unit of unutilized banked wind energy as on 31st March 2007 generated from SC No.75, 167, 189 and 191 and
- (b) direct the respondents to pay the cost of 4,53,807 units of electricity available after adjustment or consumption deemed to have been purchased by TNEB as per the agreement dt.25.03.1998 with respect to wind generator in SC No.169 & 170 and to pay the costs.

2. Contentions of the Petitioner

The contentions of the Petitioner are briefly as follows:

- (a) Two types of agreement was entered into by the petitioner with TNEB for the generation of electricity in wind mills as follows:
 - (A) Power Purchase Agreement in respect of Wind Mill SC No.169 & 170 under which the Board has agreed for utilizing the electricity generated in the said wind mills at the Petitioner's Spinning Units having HT SC No.82 in Dharmapuri and to sell any surplus energy to TNEB available after adjusting / utilizing or consumption instead of banking with TNEB in Ref. No.Lr.CE/NCES/EE/C/A3/Fenner/D.2186/97 dt.12-12-1997.
 - (B) In respect of the Wind Generators in SC No.75, 167, 189 & 191 agreement was to bank the surplus energy for consumption. The generated energy is being consumed in the petitioner Spinning Mill having SC No.82.

It is submitted that with reference to the agreement (A) 4,53,807 units of surplus energy available after consumption which accordingly deemed to have been automatically sold to TNEB and the Board is liable to pay the cost of the same. As regards to agreement (B), after consuming or adjusting the banked units still 5,47,945 units of electricity were left unutilized. The reason behind was that the mill was under illegal strike by the workers resulting in lock out and closure since 22-01-2007 thereby the mill had to face a severe financial crisis which was informed to the 2nd Respondent at the relevant point. The petitioner has been paying 5% banking charges and accordingly the same can be utilized during lean seasons. As stated above, due to the above said unforeseen circumstances the petitioner was not able to utilize the entire banked units of electricity thereby 5,47,945 units were left unutilized by the petitioner.

- (b) The petitioner has requested the 2nd Respondent orally to pay the cost or adjust the cost for the 4,53,807 units deemed to have been sold to TNEB as per the agreement above cited (A) and by representation dt.17-04-2007 to the 2nd respondent narrating the entire scenario and request to consider the exceptional situation to carry forward the un-availed / unutilized electricity units to the next financial year for consumption. The 2nd respondent by reply in Lr.No. SED/RCS/HT/A.1/F.HT SC No.82/BF/2007 dt.26-04-2007 rejected both the requests and stating that as per TNEB rules now in force and as per agreement executed, the banking of power will be for one year commencing from 1st April to 31st March of next year and the unadjusted wind energy as on 31-03-2007 is treated as lapsed and the petitioner's request to carry over the unadjusted banked wind

energy in HT SC No.82 as on 31-03-2007 to the financial year 2007-08 is not feasible of compliance.

- (c) Subsequently, the petitioner made a representation dt.09-05-2007 stating that the petitioner incurred a heavy loss due to the strike and loss would be doubled if the unutilized banked wind energy to carry forward to the financial year 2007-08 for consumption. The 1st Respondent in Lr.No.CE/NCES/SE/EE/WCB/AEE-1/F.M/S Wind Mills/D 279/07 dated 28-05-2007 replied on par with the 2nd respondent that as per TNEB rules now in force, unadjusted wind energy as on 31-03-2007 is treated as lapsed and hence the petitioner's request to carry over the unadjusted banked wind energy in HT SC No.82 as on 31-03-2007 to the financial year 2007-08 is not feasible of compliance. It is submitted that the Board having agreed for the petitioner's proposal to sell the surplus energy to TNEB available after adjustment or consumption in the spinning mill has legal and bounden duty to pay the cost of 4,53,807 units of electricity deemed to have been sold as per the agreement thereby the Board cannot and shall not traverse beyond the terms of the contract and deny the same.
- (d) The petitioner has while extracting a portion of Order No.3 dt.15-05-2006 contended that the above Order is binding on TNEB and the respondents shall have the legal obligation to implement the same. In the said Order No.3 as contended by the petitioner at para 4 of the petition, the following portion as underlined by the petitioner would be relevant.
- "Beyond the banking period, the unutilized portion of the banked energy as on 31st March will be treated as sold to distribution licensee at the rate

fixed by the Commission and slot to slot adjustment will not be applicable for such unutilized portion.

- (e) The orders of the respondent in rejecting the petitioner's request in toto is highly arbitrary, unreasonable and in violation of the orders referred to above.

3. Contentions of the Respondent

The contentions of the respondent are briefly as follows:

- (a) The respondent Board follows the procedure laid in the Board's Order BP (FB) No.20 dt. 1.3.02, with regard to the banking of surplus energy. In this order it is clearly mentioned that "To adopt a banking period of one year commencing from 1st April of every year and permit energy adjustment upto 31st March of next year. The balance unadjusted energy, if any, available after adjustment as on 31st March is to be treated as lapsed."
- (b) The Superintending Engineers were requested to issue notice to such wind farm developers to choose their option so as to bring the usage of surplus energy to one category, either for surplus banking or surplus sale category.
- (c) Based on the above instruction, the respondent No.2 has issued a notice to the petitioner on 6.6.05 and 21.11.05 to exercise their option to come under the one category viz. Wheeling & surplus banking or wheeling & surplus sale, but the petitioner has not come forward to exercise the option till date.
- (d) The industrial consumption of the HT SC No.82, Dharmapuri EDC is more than the total wind mill generation. Therefore no surplus sale units (or) surplus banking units were available upto 12 / 2006.

- (e) During 1 / 2007, 2/2007, 3 / 2007, the industrial consumption was less due to the strike in the Company and hence the wind energy was not adjusted fully in HT SC No.82. So the unadjusted surplus unit from WF HT SC No.169 & 170 was 4,68,847 units and from WF HT SC No.75, 167, 189 & 191 was 5,56,263 units have not got adjusted, for which the respondent Board is not responsible in any way.
- (f) The respondent Board could not implement the Order No.3 dated 15-05-2006 due to the pending of the appeal before Hon'ble Appellate Tribunal for Electricity at New Delhi filed by Wind Power Producers Association. This action is purely based on circumstances faced inevitably and not intentional in any way. Further, revised order on Order No.3 dated 15-05-2006, based on the directives of the Government of Tamil Nadu, is also awaited from Hon'ble TNERC. Therefore the averments of the petitioner in para 2 page 3 of the petition to consider the unutilized banked energy @ 75% of the stipulated price as per the Hon'ble TNERC order could not be considered due to the circumstances stated above.

4. Issues for consideration

Two issues arise for consideration of this Commission. They are as follows:

- i. Whether the Power Purchase Agreement dated 25th March 1998 referred to in the para 1 (b) above provides for the automatic sale of 4,53,807 units of surplus energy of power as contended by the petitioner?
- ii. Whether Respondents are bound to implement Order No.3 dated 15-05-2006 in respect of 5,47,945 units of unutilized banked wind energy as contended by petitioner?

5. Findings of the Commission with reference to the first point in issue:

With reference to the first point in issue, it may be stated that in the contention of the petitioner at para 2 (a) and (b) above, the petitioner while referring to the supplemental agreement dated 25-3-1998 contended that as per the said PPA 4,53,807 units of surplus energy available after consumption are deemed to have been automatically sold to TNEB and the Board is liable to pay the cost of the same. In the second prayer of the petitioner as mentioned in para 1 (b) above, the petitioner has reiterated the above contention. The petitioner has filed two supplemental agreements relating to WF No.169 and WF No.170 along with the petition. Para 3 of the above Agreements dated 25-3-98 read as follows:

“And whereas the Board has agreed to the proposal to utilize the power generated by the said wind mill to their company in HTSC No.82 in Dharmapuri Electricity Distribution Circle and to sell any surplus energy to TNEB available after adjusting in your HTSC instead of banking with TNEB in Reference No. Lr.No.CE/NCES/EE/C/A3/Fenner/D.21`86/97 dated 12.12.97.”

As per the above para 3, the TNEB has agreed to purchase the surplus energy relating to WF SC No. 169 and 170 of the petitioner. The said para 3 indicates deemed sale of surplus energy. Hence the TNEB is bound to pay the cost of 4,53,807 units of surplus energy purchased by it as per para 3 of the agreement. The first point in issue is decided in favour of the petitioner.

6. Findings of the Commission with reference to the second point in issue:

With reference to the second point in issue, it may be stated that Order No.3 dated 15-5-2006 applies only for the future agreements or if the existing agreements are renegotiated. As per the said cl 4 of the order all existing agreements signed prior to the commencement of the order shall continue to be in force. The

supplemental agreement dt.18-3-2002 entered into by petitioner with Respondent Board provides for adjustment of energy generated by Petitioner Company to their HTSC No. 82 Dharmapuri Electricity Distribution Circle and to bank the surplus energy available after adjustment. As per cl 4 of the order, it is only the said supplemental agreement which is applicable. The said agreement does not provide for carrying over of the unutilized banked energy to the next banking period i.e. beyond 31st March. The relevant portion of the said agreement is extracted below:

“Whereas it has been agreed that the banking of power will be for One year commencing from 1st April to 31st March of next year. The unutilized banked energy at the end of banking period cannot be carried over to the next banking period (i.e.) beyond 31st March. The outstanding energy unutilized as on 31st March of every year is deemed to be lapsed and could not be sold to TNEB at any point of time thereafter subject to the condition laid down in the Board (FB) No. 20 dt.1.3.2002.”.

In view of the above agreement, the unutilized energy will be deemed to be lapsed and could not be sold to Respondent Board.

7. Conclusion

In the above circumstances, it is directed as follows:

The prayer of the petitioner in paragraph 1 (b) above is allowed.

(1) The Respondent Board is directed to pay the cost of 4,53,807 units of surplus energy purchased by it as per paragraph 3 of the Purchase Agreement dated 25-3-98.

(2) The prayer of the petitioner in paragraph 1 (a) above viz. directing the Respondent Board to implement Order No.3 dated 15-5-06 in respect of unutilized portion of banked energy so as to enable to petitioner to get 75% rate for 5,47,945

units of unutilized energy as on 31st March 2007 generated from SC No.75, 167, 189 & 191 is rejected.

With the above directions, M.P No.6 of 2007 is finally disposed of. There would be no costs.

Pronounced in the Open Court by this Commission on 11th September 2007.

(R. RAJUPANDI)
Member

(B. JEYARAMAN)
Member

(S. KABILAN)
Chairman

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